*** THE HON'BLE SRI JUSTICE B. PRAKASH RAO**

AND

*** THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

+ WRIT APPEAL NOS. 748, 753, 860 AND 915 OF 2006

W.A.No.748 of 2006

% Dated 01.11.2006

Gurukula Vidyalaya Telangana Udyogula Sangam, rep., by its President Sri K. Narasimha Reddy, R.R. District.

.... Petitioner

Vs.

$ The A.P. Educational Institutions Society rep., by its Secretary, III-Floor,Gagan Vihar, Nampally, Hydeabad and four others.

.... Respondents

! Counsel for the Appellants-Petitioners: Sri Karnam Ramesh

^ Counsel for the Respondents: Sri Vijaya Bhaskar Moola, Standing Counsel

<GIST:

> HEAD NOTE:

? Cases referred

[1] (1989) 2 SCC 602

2 (2003) 4 SCC 104

3 AIR 1966 SC 1283

4 (2001) 8 SCC 574

5 (2004) 7 SCC 405

6 (1995) 3 SCC 270

7 (1992) 1 SCC 306

8 (1993) 4 SCC 357

9 (2004) 11 SCC 402

THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT APPEAL NOS. 748, 753, 860 AND 915 OF 2006

COMMON ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Transfer of an employee, appointed to a particular cadre of transferable posts, is an incident of service and is made in administrative exigencies. No government servant or an employee of a public undertaking has a legal right for being posted at any particular place. Transfer, from one place to the other, is generally a condition of service and the employee has no choice in the matter. Transfer is necessary in public interest and efficiency in public administration. It is, normally, not to be interfered with by Courts/Tribunals except in rare cases where it has been made in a vindictive manner. Whenever a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make a representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned employee must carry out the order of transfer. In the absence of any stay of the transfer order the employee has no justification to avoid or evade the transfer order merely on the ground of his having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance with the transfer

order, he would expose himself to disciplinary action under the relevant rules. (**Gujarat Electricity Board v. Atmaram Sungomal Poshani**[1]; **Public Services Tribunal Bar Association v. State of U.P**[2]).

The employer is entitled to decide, on a consideration of the necessities of administration, whether transfer of an employee should be made to a particular place. The employer is in the best position to judge as to how to distribute its employees at different places. Courts/Tribunals should be wary of interfering with such orders made by the employer in discharge of its managerial functions. If an order of transfer is made malafide or for some other ulterior purpose, Courts/ Tribunals may interfere and set aside such an order of transfer, as mala fide exercise of power is not considered an exercise of power in law. The finding of malafide should, however, be reached by Courts/Tribunals only if there is sufficient and proper evidence and such a finding should not be reached capriciously or on flimsy grounds. (**Syndicate Bank Ltd. Vs. Workmen**[3]).

Questions, as to whether the transfers effected are in public interest or not, are normally not examined as this would essentially require factual adjudication and invariably depend upon the peculiar facts and circumstances of the case concerned. No government servant or employee of a public undertaking has any legal right to be posted forever at one particular place or to a place of his choice since transfer of a particular employee, appointed to the class or category of transferable posts, from one place to other is not only an incident, but a condition of service, necessary

in public interest and efficiency in public administration. Unless an order of transfer is shown to be an outcome of malafide exercise or is in violation of statutory provisions prohibiting any such transfer, courts or the tribunals, normally, do not interfere with such orders as a matter of routine, as if they were appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. (**National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan**[4] and **State of U.P. v. Siya Ram**[5]).

Courts or tribunals are not appellate forums to decide on transfer of employees on administrative grounds. Wheels of administration should be allowed to run smoothly and Courts/ tribunals are not expected to interdict the working of the administrative system by transferring officers to places it considers proper. It is for the administration to take appropriate decisions and such decisions shall stand unless they are vitiated either by malice or extraneous considerations. (**State of M.P. v. S.S. Kourav**[6]).

Despite a plethora of judgments of the Supreme Court, orders of transfer and the guidelines issued in this regard still continue to be challenged before Courts/Tribunals and quite often we find interim orders being passed interdicting such orders of transfer. In the present batch of Writ Appeals the employer's repeated attempts to effect transfers, ever since 2003, have been frustrated and the guidelines framed each year, to ensure that transfers are effected in a rational and transparent manner through

a process of counseling, have not been implemented in view of its continued challenge before this Court.

Now to the particulars of the Appeals before us. Writ Appeal No. 748 of 2006 is filed by the Gurukula Vidyalayala Telangana Udyogula Sangam aggrieved by the dismissal of W.P. No. 9856 of 2006 by order dated 22.06.2006. Writ Appeal No. 753 of 2006 is filed by Sri S. Subrahmanyam, and three others, aggrieved by the dismissal of W.P. No. 11291 of 2006 by order dated 22.06.2006. Writ Appeal No. 860 of 2006 is filed by Smt. K. Sharada, and ten others, and Writ Appeal No. 915 of 2006 is filed by Sri V. Gnanakumari, aggrieved by the interlocutory orders passed in W.P.M.P.No. 29724 of 2005 dated 03.11.2005, and W.P.M.P. No. 33313 of 2005 dated 28.04.2006, in W.P. No. 23174 of 2005. The appellants in these two Appeals had earlier, along with others, impleaded themselves as respondents 4 to 46 in W.P.No.23174 of 2005.

All the four Writ Appeals were heard together and are now being disposed of by a common order.

In both W.P. Nos. 9856 and 11291 of 2006, the action of the respondents herein in issuing proceedings dated 26.04.2006, effecting general transfers of teaching and non-teaching staff through counseling with effect from 10.05.2006, was under challenge and a direction was sought to declare the guidelines issued to effect transfers for the year 2006 as arbitrary, illegal, unfair, unjust and in violation of Articles 14 and 19 of the Constitution of India. W.P. No. 9856 of 2006 was filed by the Gurukula Vidyalayala Telangana Udyogula Sangam, an association representing the teaching and non-teaching staff working in the 1st respondent society, and W.P. No. 11291 of 2006

was filed by four junior lecturers working in the said society.

Since the guidelines issued and the exercise of counseling carried out by the 1st respondent, in effecting transfer of its employees from one institution to the other, is under challenge in these Writ Appeals on several grounds, it is necessary that the facts, including the backdrop of the present litigation, be referred to. The 1st respondent, a Society registered under the A.P. Public Societies Registration Act 1350 fasli, was constituted in the year 1972. The 1st respondent-Society is an autonomous body, its management is vested in a Board of Governors, the Hon'ble Minister for School Education is its Chairperson, and the Secretary to the Government, School Education Department is its Vice Chairman. The 1st respondent society has its own Byelaws and service (recruitment) rules for its employees and has started several residential schools in different parts of the State of Andhra Pradesh. The state government had issued orders, in G.O.Rt. No. 505 dated 07.06.2003, constituting a committee for allotment of persons to different local cadres. After the committee submitted its recommendations, the State Government, in its memo dated 30.06.2003, permitted the 1st respondent society to implement the Presidential Order. The 1st respondent society issued proceedings dated 04.07.2003 referring to the permission granted by the state government in its memo dated 30.6.2003. A few of the employees of the 1st respondent society filed W.P. No. 14527 of 2003, questioning the proceedings of the government dated 30.06.2003 and that of the first respondent dated 04.07.2003, contending that the Presidential Order would not apply to the 1st respondent

society. This Court passed interim orders on 06.08.2003 holding that, while the process of counseling may go on and the respondent-authorities may proceed to pass appropriate orders, considering the representation made by various employees of the society including those who had approached the Court, the impugned orders shall not be given effect to till the matter is heard and decided by the Court. In view of the said orders, the 1st respondent society kept the orders of transfer of it staff, effected during the period 28.07.2003 and 08.08.2003, in abeyance until further orders. Later, in the said writ petition, the 1st respondent society filed W.P.M.P. No. 22902 of 2005 seeking permission of this Court to effect transfers and promotions of its teaching and non-teaching staff, without giving effect to the impugned proceedings. This Court, by order dated 08.09.2005, while permitting the 1st respondent to effect transfers and promotions of its teaching and non-teaching staff, held that such promotions and transfers shall be subject to the result of the main writ petition and that the impugned proceedings in W.P.No.16201 of 2003 shall not be given effect to. Pursuant thereto the 1st respondent issued proceedings dated 20.10.2005 and 21.10.2005 for effecting general transfers of its staff through counseling scheduled to commence from 29.10.2005. In its proceedings dated 20.10.2005 the 1st respondent had declared its intention to adopt the guidelines of transfer issued by the Government, in G.O.Ms. No. 102 dated 05.08.2005, mutatis- mutandis to suit its requirements.

W.P. No. 23174 of 2005 was filed questioning the proceedings of the 1st respondent dated 20.10.2005 and, in W.P.M.P. No. 29724 of 2005, the petitioners sought stay of all

further proceedings, including the general transfers of teaching and non-teaching staff, pursuant to the proceedings of the 1st respondent dated 20.10.2005 and 21.10.2005. This Court initially passed an interim order on 28.10.2005. Later, by order in W.P.M.P. No. 29724 of 2005 in W.P. No. 23174 of 2005 dated 03.11.2005, this Court directed that it shall be open to the respondent-society to proceed with the proposed transfers, strictly in accordance with the guidelines formulated by it, that the individual grievances of the employees shall also be attended to as far as possible, and in case any employee felt aggrieved by such transfer, it was open to him or her to approach the competent authority or this Court. This Court further directed that the respondent-Society shall incorporate a clause, in the orders of transfer, to the effect that the transfer would be subject to the result of W.P. No. 16021 of 2003 and, if zonalisation of service was to be effected, corresponding orders of posting would be issued to the concerned employees. As it was represented that a large number of vacancies had been filled by effecting promotions in the recent past, as the petitioners had urged that the vacancies filled by the respondent-Society also be brought under the purview of counseling and the issue of transfer of employees had been pending since a long time, this Court directed that the postings made against various vacancies, by the respondent-society while effecting promotions, shall also be brought under the purview of counselling. W.P.M.P. No. 33313 of 2005 was filed “for being mentioned” and to modify the orders passed in W.P.M.P. No. 29724 of 2005 dated 03.11.2005 to the effect that the vacancies filled by way of promotion in the recent past be deleted from the purview of the ongoing counseling. This Court, by order dated

28.04.2006, did not find any basis to modify or vary its earlier order dated 03.11.2005.

The 1st respondent issued proceedings dated 26.04.2006, for effecting general transfers of its teaching and non-teaching staff through counseling with effect from 10.05.2006, enclosing thereto the guidelines prescribing the criteria for transfer of staff, the preferential categories, the procedure for forwarding transfer applications, process of counseling etc. Questioning the proceedings dated 26.04.2006 and the guidelines for transfer for the year 2006, W.P. Nos. 9856 and 11291 of 2006 were filed. The Learned Single Judge, by order in W.P.Nos.9856 and 11291 of 2006 dated 22.6.2006, held that the rules issued by the government were not applicable in toto except to the extent the rules were adopted by the 1st respondent, that the rules framed in G.O.Ms.No.102 dated 5.8.2005 had not been adopted in toto, that transfers had been effected as per the guidelines framed by the society and that the ban orders, in G.O.Ms.No.71 dated 1.4.2006, were not applicable to the society. With regards the allegation that points were not given based on the length of service put in and that the action of the respondents in giving no points to junior lecturers was not justified, the Learned Judge noted that points were given as per the guidelines framed, that the points for length of service were dependent on the service rendered in rural areas, towns and cities and that points would differ having regard to the place of posting. The Learned Judge held that in such view of the matter the points given in the counseling were correct as per the guidelines. With regards the contention that if transfers were effected it would result in imbalance in several zones and that it

would result in detriment to the interest of the employees belonging to the respective zones, the learned Judge took note of the order of this Court dated 3.11.2005 wherein the respondent-society was permitted to proceed with the transfers subject to certain conditions. The learned Judge held that, as the 1st respondent – society was an autonomous body, the rules framed by the Government in G.O.Ms.No.102 dated 5.8.2005 could not be applied instinctively for effecting transfers, that to a certain extent the rules were adopted and guidelines were framed to suit the requirements of the society and that there were separate set of guidelines, for effecting transfers, which governed the field. The learned Judge held that, in such an event, it was not open to the petitioners to contend that the transfers were in violation of the rules framed under G.O.Ms.No.102 dated 5.8.2005. The learned Judge also held that the petitioner's contention, that the transfers had been effected during the ban imposed after 25.4.2006, could not be accepted for the reason that the said orders had not been adopted by the 1st respondent – society in the absence of which there was no hurdle for effecting administrative transfers and that the society, being an autonomous body registered under the Societies Registration Act, was governed by the decision of its Managing Committee and the guidelines framed by it for effecting transfers. The learned Judge held that non-finalisation of the seniority list was no ground to prevent administrative transfers having regard to the need and requirement in various schools run by the society in the State of Andhra Pradesh and that the transfers effected at the beginning of the academic year were to meet the exigencies and were an incidence of service. The

Learned Judge held that it was open for the management to effect such transfers in the interest of the society which was the paramount consideration, that the petitioners allegation that the respondents gave more points to certain juniors in the category of junior lecturers than to seniors could not be accepted for the reason that seniority alone was not a factor for awarding such points and that it differed from person to person having regard to the place of posting, namely different villages, cities and towns and merely because one was senior to another would not automatically entitle him for more number of points and, in case points were not awarded correctly as per the guidelines, the guidelines also provided for an appeal against the orders of transfer. The Learned Judge, having noted that four of the lecturers who had filed writ petitions had completed more than 10 years at their respective places, held that if that be the case it was always open for the 1st respondent society to effect administrative transfers as per the guidelines framed by it. The learned Judge also held that there was no illegality in the impugned proceedings warranting interference under Article 226 of the Constitution of India and that the writ petitions were devoid of merit.

Sri Karnam Ramesh, learned counsel for the appellants-petitioners, would reiterate the submissions urged before the learned single Judge. Learned counsel would refer to the A.P. Teachers (Regulation of Transfers) Rules 2005, notified in G.O.Ms.No.102 dated 5.8.2005, more particularly, to criteria 6 therein whereby no teacher, who has not completed two years of service in a particular school/office/institute as on the 1st of July of the year, shall be transferred. Learned counsel would refer to the

proceedings of the 1st respondent dated 26.4.2006 wherein it is stated that the society had decided to adopt the rules for transfer issued in G.O.Ms.No.102 dated 5.8.2005 mutatis-mutandis to suit the requirement of the APREI Society and that a copy of the rules/guidelines for transfer, proposed to be adopted for the society, were enclosed thereto. Learned counsel would refer to the "Guidelines for effecting transfers – 2006", more particularly to clause II(i), wherein all members of the staff were held eligible to apply for transfers with zero service, to sub-clause(vi) which provides that no employee rejoining duty after leave shall be posted to any other new institution and that he/she shall be posted only to the place wherefrom he/she had gone on leave and to sub-clause (xiv) of Clause II whereunder TGTs who were promoted as PGTs in the year 2005 were also required to submit applications for transfer and attend counseling as per the orders of the High Court in W.P.M.P.No.29724 of 2005 in W.P.23174 of 2005 dated 3.11.2005, that the posts of PGTs held by them would be shown as vacant and that they shall be called at the end of counseling on the day of counseling for that particular subject as per seniority without entitlement points for choosing the places. Learned counsel would refer to G.O.Ms.No.71 dated 1.4.2006 wherein the government had lifted the ban on transfers only for the period between 10.4.2006 to 25.4.2006 and had directed that all transfers be completed on or before 25.4.2006 and that the ban orders on transfers of employees would again be in force from 26.4.2006. Learned counsel would submit that since the ban orders were reimposed from 26.4.2006 it was not open to the respondent-society to effect transfers thereafter. Learned counsel would refer to the averments in the counter affidavit of the respondents,

wherein it was stated that G.O.Ms.No.71 dated1.4.2006 was not applicable to them, to submit that it was not open for the 1st respondent to contend that the government order in G.O.Ms.No.71 dated 1.4.2006 was not applicable to the society. Learned counsel would content that non-inclusion of Principals in the counseling process is arbitrary and illegal. According to the learned counsel, the Learned Single Judge had erred in holding that non-finalisation of the seniority list was not a ground to prevent administrative transfers having regard to the need and requirement in various schools run by the Society in the State of A.P. Learned Counsel would submit that, since under the guidelines points were awarded on the basis of seniority, seniority was a relevant criteria in the counseling process being undertaken for effecting transfers. Learned counsel would also find fault with guideline no.(iv), which prescribes that no employee who has rejoined after leave shall be posted to any other new institution and that he/she shall be posted only to the place wherefrom he/she had gone on leave, to contend that merely because an employee has gone on leave, it does not disentitle him from choosing any other place to which he/she should be transferred to under the counseling process. Learned counsel would refer to a few instances to submit that in the case of those employees, the respondent – society had not adhered to the guidelines for effecting transfers.

While adopting these submissions, Sri P.Kesava Rao, learned counsel for the appellants, would submit that the rules in the G.O.Ms.No.102 dated 5.8.2005 are statutory rules and since statutory rules have been adopted mutatis-mutandis by the respondent-society, it must be deemed that the transfer of

employees in the 1st respondent-society is governed by statutory rules. Learned counsel would submit that the 2006 guidelines, being administrative instructions, cannot run contrary to the statutory rules under G.O.Ms.No.102 dated 5.8.2005 and, since statutory rules govern the field, the 1st respondent-society is bound to adhere to the statutory rules and its failure to do so would entitle the employees to seek a mandamus from this Court to the 1st respondent. Learned counsel would submit that the respondents had resorted to selective compliance with the guidelines only to ensure that candidates of their choice were given plum postings to the detriment of other employees.

Sri M.Venkata Rama Reddy and Sri M.Subba Reddy, learned counsel for the appellants, would submit that the interim orders of this Court, in W.P.M.P.29724 of 2005 in W.P.23174 of 2005 dated 3.11.2005 which was affirmed in W.P.M.P.33313 of 2005 dated 28.4.2006, required the appellants in W.A.Nos.860 and 915 of 2006 also to subject themselves to the counseling process. Learned Counsel would submit that there was no justification in the appellants herein, who were promoted and given postings in the recent past, being included in the counseling process of 2005 or in their being subjected to transfer along with others in the counseling being held for the year 2006. Learned counsel would submit that this Court, in proceedings under Article 226 of the Constitution of India, could not impose conditions or lay down guidelines prescribing the manner in which or the persons who should be transferred from one place to another. According to the Learned Counsel, though the interim orders passed by the learned Single Judge was for transfers to be effected in the year 2005 and,

while the 1st respondent had not effected transfers in the year 2005, the 2006 transfer guidelines required those candidates also to subject themselves to the process of counseling held for effecting transfers.

Sri P.Srinivas, learned counsel appearing on behalf of Sri Vijaya Bhaskar Moola, learned standing counsel for the respondent-society, would submit that the 1st respondent, being a distinct legal entry, was not automatically bound by government orders, or the statutory rules made applicable to government servants, unless the said G.Os. or rules were adopted in toto by the 1st respondent society. Learned counsel would submit that, while the 1st respondent had taken the rules made under G.O.Ms.No.102 dated 5.8.2005 as the basis, it had, to meet its peculiar needs, made certain changes thereto and had prescribed guidelines for effecting transfers in the year 2006. Learned counsel would submit that the 1st respondent is adhering to the guidelines both in letter and spirit and that the guidelines themselves provide for an appeal to the vice-chairman against orders of transfers passed by the secretary. Learned counsel would submit that in case an individual employee is aggrieved by his orders of transfer, on the ground that the guidelines have been violated, it was always open for him to bring it to the notice of the vice-chairman by way of an appeal under clause xiv of the guidelines, in which event the grievance would be redressed in accordance with the guidelines itself. Learned counsel would submit that the ban orders, issued in G.O.Ms.No.71 dated 1.4.2006, are applicable only to government employees and that such a ban has no application to the 1st respondent – society.

Learned counsel would submit that, in any event, even the government had not chosen to apply the ban orders for teachers working in government/local body schools and, as such, the said G.O. cannot be held applicable to teachers/lecturers working in the 1st respondent-society. Learned counsel would submit that, since transfers were an incident of service, these were all matters for the 1st respondent to decide in accordance with the guidelines.

Before examining the rival contentions it is necessary to briefly refer to the guidelines framed by the 1st respondent society to effect transfers in the year 2006. Clause I prescribes the Committee to effect transfer of staff at the State level and Clause II the criteria for transfer of staff. Clause III prescribes the method of calculation of service. For the purpose of calculation of service in a particular station the group of places together, as mentioned in Clause III, is required to be taken as one unit. Clause IV prescribes the entitlement points and thereunder points are awarded (1) for the service in the present institution/office located in the areas as on 1.7.2006 for different categories (2) for habitations/towns which are classified into three different categories; (3) service points are prescribed as one point for five years of service in the present cadre as on 1.7.2006, that completed years of service only will be taken into account and fraction of service would not be taken into account for calculation of points. Sub-clause(4) prescribes certain special categories which include employees whose spouses are working in government/local bodies/public sector/aided institutions in aided posts, employees who are to retire within two years from 1.7.2006, state level executive members of recognized employees

associations, (president and general secretary), unmarried women, employees whose spouses are working in the 1st respondent – society and the president and general secretary of the district units of recognized service associations. Sub-clause(5) prescribes the preferential categories and thereunder preference is given to the physically handicapped, widows, legally separated single women, employees or their spouses suffering from certain diseases etc. Note(a) thereunder provides that the benefit of preference will be given once in 8 years in the said categories and would be admissible only to those who did not avail the benefit in the earlier counseling held for the year 2001. Clause V prescribes the method of forwarding of the transfer applications, Clause VII the arrangement of applications, Clause VIII notification of vacancies, Clause IX the process of counseling, clause X selection of vacancies by the applicants, Clause XI issue of orders, Clause XII completion of counseling and Clause XIV for appeal. The guidelines are exhaustive and provide for a rational and reasonable method of effecting transfers.

It is no doubt true that the A.P. Teachers (Regulation of Transfers) Rules, 2005, notified in G.O.Ms.No.102 dated 5.8.2005 and made under Sections 5(2) and 12(1) of the A.P. School Education Teachers and other Employees (Abolition of existing service cadres and Regulation of recruitment and conditions of service) Ordinance, 2005 (A.P. Ordinance 12 of 2005) have statutory force. The A.P. Ordinance 12 of 2005, however, applies only to teachers working in government, mandal parishad and zilla parishad schools and other employees working in the department of school education. This ordinance was later enacted

as the “A.P. School Education Teachers and other employees (abolition of existing service cadres and regulation of recruitment and conditions of service) Act, 2005”, (Act 27 of 2005). Since Ordinance 12 of 2005 and Act 27 of 2005 apply only to teachers working in government, mandal parishad and zilla parishad schools and to employees working in the department of school education, the rules made thereunder, also apply only to the said employees and since the Ordinance and the Act itself are not applicable to the 1st respondent society, the rules notified in G.O.Ms.No.102 dated 5.8.2005 also do not apply to it. As noted above, the 1st respondent – society is registered under the A.P. Public Societies Registration Act and is, a legal entity, distinct from that of the Government of A.P. As such the rules, notified in G.O.Ms.No.102 dated 5.8.2005, do not automatically apply to the 1st respondent – society. Since the 1st respondent is not governed by these statutory rules, it cannot be said that transfer of the petitioners herein, or of other employees of the 1st respondent-society, are governed by statutory rules. The board of management of the 1st respondent has chosen to adopt these rules with necessary modifications to meet its requirements. Adoption of the rules notified in G.O.Ms.No.102 dated 5.8.2005, by the 1st respondent society, does not confer statutory status on the guidelines prescribed by the 1st respondent for effecting transfers. The 1st respondent, a distinct legal entity, is not automatically bound by government orders, or the statutory rules in G.O.Ms.No.102 dated 5.8.2005, and is entitled to formulate its own guidelines to suit its requirements. It was, therefore, open to the

1st respondent to adopt them with necessary modifications to suit its requirements. The contention that the transfer guidelines of the year 2006 run contrary to the rules in G.O.Ms.No.102 dated 5.8.2005 and must be struck down does not, therefore, merit acceptance. The ban orders issued by the government in G.O.Ms.No.71 dated 1.4.2006, which are in the nature of executive/administrative instructions, apply only to government servants. Since employees of the 1st respondent are not government servants, the ban orders in G.O.Ms.No.71 dated 1.4.2006 are not applicable to them. With regards the procedure adopted for conducting counseling of PGTs and TGTs in Sanskrit combinedly, it is stated by the 1st respondent, in its counter affidavit, that during bifurcation of the APREI society into two societies in 2001, some of the PGTs in Sanskrit were allotted to the newly established the APTWREI society for want of posts in the APREI society and, though they had initially opted to join the service of APREI society, subsequently the APTWREI society had decided to abolish sanskrit as a subject in its institutions and, on the basis of representations of the PGTs in Sanskrit, the Board of Governors of the 1st respondent had agreed to take them back and adjust them against future vacancies of TGT posts and it was in such circumstances that some of the PGTs were working against TGT posts and therefore counseling was conducted for Sanskrit Teachers, both TGTs and PGTs, on the same day, that in the first instance the TGTs were asked to choose vacancies of TGTs only and thereafter the PGTs were permitted to choose the remaining vacancies in PGT and TGT posts as per their entitlement. With regards transfer of Junior Lecturers, the 1st respondent would

state, in its counter affidavit, that seniority is not the criteria for effecting general transfer through counseling and that entitlement points are alone taken into account to decide the descending order in which an opportunity was to be provided for choice of the place of transfer. With regards not conducting counseling for principals, it is stated that the counseling was conducted on 28.10.2005 and, therefore, counseling for Principals was not included in the present schedule. Respondents would refer to the fact that in some cases there were teachers who had completed more than 15 years of service in one particular place without giving room to others. The explanation given by the respondents, in justification of their action, is reasonable. In any event, as has been held by the Apex Court, in **Shri Bhagwan[4]** and **Siya Ram[5]** it is not for this Court, under Article 226 of the Constitution of India, to sit in appeal over each and every decision of the 1st respondent in effecting transfers and to substitute its own decision for that of the employer. The Learned Single Judge has considered all the contentions raised by the appellant-petitioners, with regards individual cases of transfer, in detail and we are in complete agreement with the reasons given therein for dismissing the writ petitions. Clause (xiv), of the guidelines to effect transfers-2006, provides for an appeal against the orders of transfer. Any individual grievance of transfer can always be addressed by the appellate authority.

While the guidelines framed, even if it does not have statutory sanction, must be adhered to, such guidelines, more so in matters of transfer, cannot be enforced in proceedings under Article 226 of the Constitution of India. In **Bank of India v. Jagjit**

Singh Mehta[7], the Supreme Court observed:-

"…..**No doubt the guidelines require the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible.** The only thing required is that the departmental authorities should consider this aspect along with the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees….." (emphasis supplied)

In **Union of India v. S.L. Abbas**[8] the Supreme Court held:-

"……All he says is that he should not be transferred because his wife is working at Shillong, his children are studying there and also because his health had suffered a setback some time ago. He relies upon certain executive instructions issued by the Government in that behalf. **Those instructions are in the nature of guidelines. They do not have statutory force.**

Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right….." {emphasis supplied}

Again in **State of U.P. v. Gobardhan Lal**[9] the Apex Court reiterated:-

"……It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. **Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of**

grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.

The very questions involved, as found noticed by the High Court in these cases, being disputed questions of facts, there was hardly any scope for the High Court to generalise the situations based on its own appreciation and understanding of the prevailing circumstances as disclosed from some write-ups in journals or newspaper reports. Conditions of service or rights, which are personal to the parties concerned, are to be governed by rules as also the inbuilt powers of supervision and control in the hierarchy of the administration of State or any authority as well as the basic concepts and well-recognised powers and jurisdiction inherent in the various authorities in the hierarchy. All that cannot be obliterated by sweeping observations and directions unmindful of the anarchy which it may create in ensuring an effective supervision and control and running of administration merely on certain assumed notions of orderliness expected from the authorities affecting transfers. Even as the position stands, avenues are open for being availed of by anyone aggrieved, with the authorities concerned, the courts and tribunals, as the case may be, to seek relief even in relation to an order of transfer or appointment or promotion or any order passed in disciplinary proceedings on certain well-settled and recognized grounds or reasons, when properly approached and sought to be vindicated in the manner known to and in accordance with law. No such generalised directions as have been given by the High Court could ever be given leaving room for an inevitable impression that the courts are attempting to take over the reigns of executive

administration. Attempting to undertake an exercise of the nature could even be assailed as an onslaught and encroachment on the respective fields or areas of jurisdiction earmarked for the various other limbs of the State. Giving room for such an impression should be avoided with utmost care and seriously and zealously courts endeavour to safeguard the rights of parties….."(emphasis supplied)

Even if, in stray instances, the guidelines have not been strictly implemented no interference is called for since these guidelines cannot be enforced in proceedings under Article 226 of the Constitution of India. Writ Appeal Nos.748 and 753 of 2006 are accordingly dismissed and the order of the Learned Single Judge, in W.P.Nos.9856 and W.P.No.11291 of 2006 dated 22.6.2006, is affirmed.

The contentions of Sri M.Venkatarama Reddy and Sri M.Subba Reddy, learned counsel for the appellants in W.A.Nos.860 and 915 of 2006, remain to be taken note of. They are aggrieved by the interim order, in W.P.M.P.No.29724 of 2005 dated 3.11.2005 and W.P.M.P. No. 33313 of 2005 dated 28.4.2006 in W.P.NO.23174 of 2005, directing that even those who had been recently promoted in the year 2005 must also be made to participate in the process of counseling being held to effect transfers. Learned counsel would submit that it is not for this Court to impose any such condition when the 1st respondent has chosen not to include such of those employees, who were promoted in the year 2005, in the counseling process held for the year 2005. This contention cannot be said to be without merit and may have necessitated further examination but for the fact that, pursuant to the interim orders of this Court, counseling for effecting transfers for the year 2005 was not taken up and in the transfer guidelines for the year 2006 the 1st respondent has, on its

own accord, included employees with zero service also to participate in the counseling process. While making it clear that it is, normally, not for this Court to impose any conditions on the employer, in the manner in which transfers are to be effected, or to prescribe guidelines in this regard, as these are all matters in the employer's realm, no relief can be granted to the appellants herein since the 1st respondent has, on its own accord, included members with zero service to participate in the counseling process pursuant to the transfer guidelines for the year 2006.

In W.P.No.23174 of 2005 the action of the respondents, in issuing proceedings dated 20.10.2005 and 21.10.2005, in effecting general transfers of its staff through counseling with effect from 29.10.2005, informing the schedule to effect the transfer of non-teaching staff and the modifications in the guidelines for processing and sending applications for transfers etc., were questioned as arbitrary, illegal, unfair and unjust. In the counter affidavit, filed on behalf of the 1st respondent, it is specifically stated that pursuant to the interim order of this Court in W.P.M.P.No.29724 of 2005 in W.P.23174 of 2005 dated 28.10.2005, the 1st respondent felt it desirable to postpone the counseling till 2006 summer vacations and therefore counseling could not be conducted as scheduled and that thereafter fresh guidelines were communicated through its proceedings 26.4.2006. It is thus clear that the transfer guidelines of the year 2005 are no longer in force and the challenged thereto in W.P.23174 of 2005 no longer survives. W.P.No.23174 of 2005 is accordingly dismissed. As the main writ petition, in W.P.23174 of 2005, is itself dismissed, the interim orders passed therein no longer remain in

force. Writ Appeal Nos.860 and 915 of 2006, filed against the interlocutory orders passed in W.P.No.23174 of 2005, are accordingly dismissed as infructuous. However, in the circumstances, without costs.

_____

B.PRAKASH RAO,J

Date: -11-2006

_____

RAMESH RANGANATHAN,J

Note:
L.R. Copy be marked
B/o
ASP/MRKR

[1] (1989) 2 SCC 602

[2] (2003) 4 SCC 104

[3] AIR 1966 SC 1283

[4] (2001) 8 SCC 574

[5] (2004) 7 SCC 405

[6] (1995) 3 SCC 270

[7] (1992) 1 SCC 306

[8] (1993) 4 SCC 357

[9] (2004) 11 SCC 402